No. 04-589

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

THE BRINK'S COMPANY *et al.*,
Petitioners,

v.

UNITED STATES OF AMERICA *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF IN OPPOSITION FOR RESPONDENTS TRUSTEES OF THE UMWA COMBINED BENEFIT FUND AND UMWA COMBINED BENEFIT FUND

HOWARD R. RUBIN
WILLIAM E. COPLEY
SONNENSCHEIN NATH & ROSENTHAL LLP
1301l K Street, N.W.
Suite 600, East Tower
Washington, D.C. 20005
(202) 408-6400

DAVID W. ALLEN
CHRISTOPHER F. CLARKE
Office of the General Counsel
UMWA HEALTH AND RETIREMENT FUNDS
2121l K Street, N.W.
Washington, D.C. 0037
(202) 521-2220

STEPHEN J. POLLAK *
JOHN TOWNSEND RICH
GOODWIN PROCTER LLP
901 New York Ave., N.W.
Washington, D.C. 20001
(202) 346-4000

Attorneys for the Respondents Trustees of the UMWA Combined Benefit Fund and UMWA Combined Benefit Fund

* Counsel of Record

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WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

QUESTIONS PRESENTED

1. Whether the court of appeals correctly upheld the constitutionality of the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701–9722, 30 U.S.C. § 1232(h) (the "Coal Act") against petitioners' challenge that the Coal Act violates the nondelegation doctrine.

2. Whether the court of appeals correctly ruled that the provisions of the Coal Act are severable and should continue in force after this Court invalidated the Coal Act's application as to Eastern Enterprises in *Eastern Enterprises* v. *Apfel*, 524 U.S. 498 (1998).

3. Whether the court of appeals correctly upheld the Commissioner of Social Security's decision to assign to petitioners certain beneficiaries whose assignments to other coal operators had been voided as a result of this Court's decision in *Eastern Enterprises*.

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BRIEF IN OPPOSITION FOR RESPONDENTS TRUSTEES OF THE UMWA COMBINED BENEFIT FUND AND UMWA COMBINED BENEFIT FUND

Congress passed the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. §§ 9701–9722, 30 U.S.C. § 1232(h) (the "Coal Act"), to ensure continued funding of health benefits for retired coal miners and their families guaranteed by collective bargaining agreements between the United Mine Workers of America ("UMWA") and coal operators. Respondents are the Trustees of the UMWA Combined Benefit Fund and the UMWA Combined Benefit Fund ("Combined Fund"), which was created pursuant to the Coal Act. 26 U.S.C. § 9702(a). The Combined Fund is a multiemployer employee welfare benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1002(1), (37), and an employee trust fund within the meaning of the Labor Management Relations

Act ("LMRA"), 29 U.S.C. § 186(c)(5). See 26 U.S.C. § 9702(a)(3). The Trustees administer the Combined Fund. At its creation in 1993, the Fund provided health benefits to more than 100,000 beneficiaries. Due primarily to mortality, the number of beneficiaries is now about 40,000.

In this lawsuit, The Brink's Company and nine of its subsidiaries ("Brinks" or "petitioners") seek to shed their liability under the Coal Act by attacking the constitutionality of the statute. If unsuccessful in obtaining a refund of all monies paid to the Combined Fund, petitioners seek, at least, to avoid premium liability with respect to certain of their former employees whom the Commissioner of Social Security ("SSA") assigned to them after this Court issued its decision in *Eastern Enterprises* v. *Apfel*, 524 U.S. 498 (1998).

STATEMENT OF THE CASE

A. History and Structure of the Coal Act

The history of the health care crisis in the coal industry and the events leading to the enactment of the Coal Act have been reviewed at length by this Court. *See, e.g.*, *Barnhart* v. *Peabody Coal Co.*, 537 U.S. 149, 153–55 (2003); *Barnhart* v. *Sigmon Coal Co.*, 534 U.S. 438, 442–47 (2002); *Eastern Enterprises*, 524 U.S. at 504–15 (plurality).[1] Beginning in 1946, health care for retired coal miners represented by the UMWA was provided through a series of multiemployer plans ("UMWA Plans") established and maintained through successive collective bargaining agreements known as National Bituminous Coal Wage Agreements ("NBCWAs"). *Eastern Enterprises*, 524 U.S. at 510–11. The UMWA Plans continued to provide benefits to eligible retirees even if the retirees' former employers went out of business or otherwise stopped paying into the Plans. *Id.* The remaining coal

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[1] Unless otherwise indicated, citations to *Eastern Enterprises* refer to Justice O'Connor's plurality opinion.

operators signatory to the NBCWA financed the benefits of these so-called "orphan" retirees.

By the late 1980s, the UMWA Plans were in serious financial trouble. *Id.* at 511. As health care costs rose, increasing numbers of signatory coal operators exited the coal industry or refused to sign the NBCWA, leaving health care for their own retirees to be funded by those signatory operators still mining coal under NBCWAs. *Id.* at 510–11. Fewer and fewer operators remained to carry the burden of rapidly rising health care costs, not only for their own retirees but also for thousands of retirees with whom the remaining contributing operators had no employment relationship. *Id.* As a result, the continued viability of the UMWA Plans multiemployer health care system was cast into serious doubt.

This funding crisis culminated in 1989, when the UMWA led a ten-month strike against Pittston Coal Company—a petitioner here—a major coal producer that had refused to sign the 1988 NBCWA although thousands of its retirees and their dependents would remain covered by the health plans created by the NBCWAs. *See id.* at 511. The dispute was not resolved until Secretary of Labor Elizabeth Dole intervened. As part of the settlement, the Secretary established a Coal Commission to study the retiree health care crisis. *Sigmon*, 534 U.S. at 445.[2]

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[2] In its own recounting of the history that led to passage of the Coal Act, Brinks claims that the UMWA and the Bituminous Coal Operators' Association ("BCOA") "wanted to shift a portion of their liability for retiree health care to the rest of the industry" and that the UMWA tried to manufacture a "crisis" to prompt legislative action. Pet. 5, 6. Brinks's attempt to assign blame for the well-documented crisis that existed in the coal industry is not only misguided, but irrelevant to Brinks's petition. As the court of appeals recognized, the constitutionality of the Coal Act is measured by the terms of the statute, not by the positions taken by private parties that either supported or opposed legislation. See Pet. App. 15a–22a.

Recognizing that health benefits for more than 100,000 beneficiaries of the UMWA Plans were in jeopardy and that many of the beneficiaries were retired miners whose former employers were no longer in business, as the Coal Commission had made clear, Congress undertook its own intensive examination of the crisis. *Id.* at 444–45. The Coal Act was enacted on October 24, 1992, and established a statutory system for funding retiree health benefits. When it enacted the Coal Act, Congress stated expressly the purposes of the legislation:

> "It is necessary to modify the current private health care benefit plan structure for retirees in the coal industry to identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees." Energy Policy Act of 1992, Pub. L. No. 102-486, § 19142(a)(2), 106 Stat. 3037, 26 U.S.C. § 9701 note.

Congress stated that it was enacting the Coal Act

> "to remedy problems with the provision and funding of health care benefits with respect to the beneficiaries of multiemployer benefit plans that provide health care benefits to retirees in the coal industry . . . [and] to provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans." *Id.* § 19142(b)(1)-(3), 26 U.S.C. § 9701 note ("Statement of Policy").

The Coal Act, codified as part of the Internal Revenue Code, was designed to ensure that retired coal miners and their dependents continue to receive their health benefits and that, to the extent possible, those benefits are financed by the companies that formerly employed the retirees. The Combined Fund, one of two trust funds created by the statute, is at issue in this case. The Coal Act directed that the existing 1950 and 1974 UMWA Benefit Plans, the two collectively bargained UMWA Plans whose financial crisis had prompted

the statute, be merged into the Combined Fund as of February 1, 1993. 26 U.S.C. § 9702(a)(2). The Coal Act requires the Trustees of the Combined Fund to provide health and death benefits to "eligible beneficiaries" as defined in the Act—retired coal miners who, as of July 20, 1992, were eligible to receive, and were receiving, benefits from the 1950 or 1974 UMWA Benefit Plans. *Id.* § 9703(a), (b)(1), (c), (e), (f). Premiums are paid by coal operators on the basis of beneficiaries assigned to them under the terms of the Act at rates calculated pursuant to a formula established by Congress. *See id.* §§ 9704(b)(1)–(2), (c), (d), (f), 9706(a).

The legislative powers exercised by Congress and executive powers exercised by federal agencies in the Coal Act, and the administrative responsibilities exercised by the Trustees under the Act are discussed in detail in Part I of the Argument below.

B. *Eastern Enterprises* v. *Apfel* and SSA's Response

In *Eastern Enterprises*, this Court addressed the constitutionality of the third tier of the Combined Fund beneficiary assignment system, 26 U.S.C. § 9706(a)(3), as applied to a coal operator that did not sign the 1974 NBCWA or any subsequent NBCWA and was not related to a company that had signed such an agreement. *See* 524 U.S. at 515–16. A divided Court held this aspect of the statute unconstitutional as applied to such an operator, Eastern Enterprises. *Id.* at 538 (plurality); *id.* at 550 (Kennedy, J., concurring in the judgment).

In fall 1998, after *Eastern Enterprises*, SSA relieved Eastern Enterprises and other operators that, like Eastern Enterprises, had not signed the 1974 or a later NBCWA and were not related to a company that had signed such an agreement, of their Combined Fund beneficiary assignments. Subsequently, SSA assigned a number of these "*Eastern* beneficiaries" to those coal operators, like Brinks, that had employed the retired miners for the longest period as among

operators as to whom it is constitutional to make assignments under § 9706 of the Coal Act. Brinks received 95 such assignments. Pet. 11.

C. Brinks's Claims and the Rulings Below

Pittston (now Brinks) sued the United States in the U.S. District Court for the Eastern District of Virginia, arguing, *inter alia*, that the Coal Act unconstitutionally delegates legislative and executive authority to a private party (the Fund), that the Act is nonseverable and must therefore be struck down in the light of *Eastern Enterprises*, and that *Eastern* beneficiaries could not be assigned to operators such as Pittston that were not shielded from liability by *Eastern Enterprises*. The United States brought the Trustees into the case by filing a third-party complaint. After extensive proceedings not relevant here, the district court granted summary judgment in favor of the United States and the Trustees on the three claims. Pet. App. 42a–65a. The court of appeals affirmed (Pet. App. 1a–36a), unanimously on the constitutional and severability claims and by a 2–1 vote on the assignments claim.

REASONS FOR DENYING THE WRIT

No conflict exists among the courts of appeals on any of the three issues raised in the petition and petitioners claim none. Moreover, the decision of the U.S. Court of Appeals for the Fourth Circuit is correct. In the 12 years since passage of the Coal Act, no court has ruled that Congress impermissibly delegated governmental powers to the Combined Fund. Nor, in the six years since this Court decided *Eastern Enterprises*, has any court ruled that the Coal Act's provisions are not severable and that the Act should be struck down in its entirety. As to whether SSA has the authority to assign *Eastern* beneficiaries to companies—such as Brinks—that employed the beneficiaries and as to whom the Coal Act is constitutional, four of the five courts to have considered the

issue (including the court of appeals in the instant action) have upheld SSA's authority to make such assignments.[3] The only case decided against SSA and the Trustees on the "*Eastern* reassignment" issue (a ruling from the U.S. District Court for the Eastern District of Kentucky) is pending in the U.S. Court of Appeals for the Sixth Circuit, making the issue particularly unworthy of review at this juncture.[4] Brinks has presented no good reason for the petition to be granted.

I. THE COAL ACT DOES NOT VIOLATE THE NONDELEGATION DOCTRINE.

The question Brinks asks this Court to review is "whether the UMWA Combined Fund is exercising executive or legislative power." Pet. 13. The court of appeals answered this question correctly, ruling unanimously that the Combined Fund exercises no such powers. Pet. App. 8a–10a, 12a–22a. Brinks presents no case law that calls into question the constitutionality of delegating to the Trustees the responsebility of administering a multiemployer ERISA plan. Brinks's contention that the ruling of the court of appeals is in direct conflict with three holdings of this Court is unfounded. Brinks fails to explain how the appellate court's labeling of Coal Act premiums as "taxes" makes the question it presents worthy of review.

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[3] *Compare* Pet. App. 27a–34a (court of appeals in instant action upholding SSA's authority to make *Eastern* reassignments); *id.* 62a–65a (district court in instant action upholding SSA's authority to make such assignments); *Nell Jean Indus., Inc.* v. *Barnhart*, 224 F. Supp. 2d 10 (D.D.C. 2002) (same); *and Wheeling-Pittsburgh Steel Corp.* v. *Barnhart*, 229 F. Supp. 2d 539 (N.D.W.V. 2002) (same), *with Sidney Coal* v. *Massanari*, 221 F. Supp. 2d 755 (E.D. Ky. 2002) (rejecting SSA's authority to make *Eastern* reassignments), *appeals pending*, Nos. 04-6286 & 04-6291 (6th Cir. docketed Nov. 12, 2004).

[4] Sidney Coal v. Massanari, supra n. 3.

A. The Coal Act Does Not Delegate Legislative Power to the Combined Fund.

Brinks devotes one paragraph to its argument that the Coal Act delegated legislative power to the Combined Fund. Pet. 15. The claim is refuted by the terms of the Coal Act and this Court's case law regarding delegations of legislative authority to private parties.

The face of the statute establishes that Congress did not delegate legislative power to the Trustees, but exercised itself:

- the power to decide which coal companies would be subject to the provisions of the Coal Act (26 U.S.C. § 9701(c));
- the power to set the standard for determining whether a person is eligible to receive benefits from the Combined Fund (*id.* § 9703(e), (f));
- the power to set the formulas for computing the health, death and unassigned beneficiaries premiums (*id.* § 9704(b)(2), (c), (d));
- the power to create rules that set forth which beneficiaries would be assigned to which coal companies, thereby establishing the companies' liability for premiums (*id.* § 9706(a)(1)–(3));
- the power to decide how the transfer subsidies from the 1950 UMWA Pension Plan and the Abandoned Mine Reclamation Fund are to be used (*id.* § 9705(a)(3), (b)(2));
- the power to determine the level of health and death benefits to be provided (*id.* § 9703(b), (c)); and

- the power to set standards for trustee conduct of responsibilities of administering the plan (*id.* § 9702(a)(3)).

As the court of appeals noted, "[a]gainst these detailed requirements of the Coal Act, the Trustees of the Combined Fund are assigned the task of collecting the premiums designated by the statute from the persons specified by the statute." Pet. App. 16a.

Brinks cites one provision of the Coal Act as grounds for its claim that the Combined Fund "exercises a degree of legislative authority," § 9702(a)(1) (Pet. 15), which directs the Trustees to "create a new private plan to be known as the United Mine Workers of America Combined Benefit Fund." 26 U.S.C. § 9702(a)(1). According to Brinks, § 9702(a)(1) gives the Combined Fund the authority "to write its own rules for implementing the Coal Act." Pet. 15. Brinks, however, fails to address the fact that Congress tightly circumscribed the ambit of the Trustees' authority by making the Combined Fund a multiemployer plan subject to the requirements of ERISA and the LMRA, 26 U.S.C. § 9702(a)(3), and by prescribing on the face of the Coal Act the rules by which the Fund must operate.

In this connection, Brinks quotes portions of the Combined Fund's Trust Document out of context in an effort to show that the Trust Document confers "full discretionary power" on the Trustees. Pet. 9. Brinks notes, for example, that the Trust Document lists specific powers relating to the delivery of benefits, control of assets, and asset management. *Id.* Brinks fails to mention, however, that the Trustees' authority to deliver benefits, described in Article VI of the Trust Document, is "[s]ubject to the requirements of section 9703 of the [Coal Act], including the limitations on permissible expenditures contained therein . . . ." Pet. App. 129a. Nor does Brinks explain that the list of powers outlined in Article VIII (Asset Management), which includes the power "[t]o

enforce any right, obligation or claim in their absolute discretion," (Pet. App. 133a) is qualified by the following statement at the end of Article VIII:

> "Notwithstanding the above authority granted the Trustees hereunder, no power shall be exercisable in any manner which violates the requirements of the [Coal] Act, ERISA or any other applicable law, governmental rule or regulation, or which is inconsistent with the needs and purposes of the Trust." Pet. App. 134a.[5]

Brinks's claim that the Combined Fund exercises legislative power is not advanced by the citations to *A.L.A. Schechter Poultry Corp.* v. *United States*, 295 U.S. 495 (1935), or *Carter* v. *Carter Coal Co.*, 298 U.S. 238 (1936). See Pet. 15. The statutes struck down in *Schechter* and *Carter Coal* bear no resemblance to the Coal Act. The statute at issue in *Schechter* placed significant legislative authority in the hands of industry by permitting private trade associations effectively to set industry-wide standards regarding maximum hours for workdays, a minimum age requirement for employment, and a minimum wage rate. 295 U.S. at 521–22, 524, 529. The statute struck down in *Carter Coal* also delegated legislative authority to private entities by conferring power on the majority of coal producers to set minimum wages and maximum work hours for the entire industry. 298 U.S. at 283–84. That statute provided no constraint on the powers to

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[5] In a similar vain, Brinks misrepresents the extent to which the Combined Fund's Trust Document confers authority on the Trustees to determine questions of coverage and eligibility. Pet. 8. Article V, entitled "Trustee Responsibilities," does not state, as Brinks claims, that "[p]ursuant to the Coal Act and ERISA," the Trustees have full and exclusive authority to determine issues of coverage. *Id.* Rather, the Trust Document states that the Trustees' authority is "[s]ubject to the provisions of the Coal Industry Retiree Health Benefit Act of 1992 . . . ." Pet. App. 129a. The provisions of the Coal Act, namely § 9703(e) and (f), establish limitations on enrollment and define who may be deemed an "eligible beneficiary." Congress made those determinations, not the Trustees.

be exercised by the private parties and no remedies for persons aggrieved by the exercise of such powers. *See id.* at 310–11.

Brinks cannot plausibly contend based on *Schechter* or *Carter Coal* that any provision in the Coal Act confers legislative authority on the Combined Fund, particularly since the most analogous power—the power to set premiums—was exercised by Congress. *See* 26 U.S.C. § 9704.

B. The Coal Act Does Not Delegate Executive Power to the Combined Fund.

Brinks's claim that Congress delegated executive power to the Combined Fund is equally infirm. See Pet. 13–14. Brinks asserts that the Combined Fund is "charged with executing the Coal Act," but ignores the terms of the statute. See Pet. 14. Thus, there are various "executive" functions that have to be carried out under the Coal Act, but Congress assigned each of those functions to officers of the federal government—the Commissioner of Social Security, the Secretary of the Interior and the Secretary of the Treasury. The cases cited by Brinks (*Printz* v. *United States*, *Bowsher* v. *Synar* and *Buckley* v. *Valeo*) do not support its claim that the Combined Fund wields executive power.

Like the court of appeals (Pet. App. 15a-17a), we start with the terms of the Coal Act. The Trustees do not assign beneficiaries to coal operators or compute premiums; nor do they make the judgment calls involved in performing those tasks. Congress delegated those responsibilities to SSA. The Coal Act tasks SSA with reviewing work histories for tens of thousands of retired coal miners and assigning those miners to their former employers pursuant to the three-tier system created by Congress. 26 U.S.C. § 9706(a)(1)–(3). As part of its responsibility of assigning beneficiaries, SSA determines whether companies are "related persons," within the meaning of § 9701(c)(2). *See*, *generally*, *Barnhart* v. *Sigmon Coal*

Co., 534 U.S. 438 (2002). And SSA, not the Trustees, reviews challenges to assignments. 26 U.S.C. § 9706(f). Likewise, SSA, not the Trustees, computes the annual per beneficiary premium pursuant to the formula set by Congress. *Id.* § 9704(b)(2).

Congress also tasked the Secretaries of Interior and Treasury with responsibilities under the Coal Act. Pursuant to detailed directions set by Congress, the Secretary of Interior transfers monies to the Combined Fund to offset the cost of health benefit expenditures for unassigned beneficiaries. *See* 30 U.S.C. § 1232(h); 26 U.S.C. § 9705(b). Congress provided for the imposition of penalties on assigned operators that fail to pay premiums owed under § 9704. *See* 26 U.S.C. § 9707. The Secretary of the Treasury has the "sole discretion" to waive all or part of the penalty. *Id.* § 9707(d)(3).

By contrast, the Trustees were delegated the power to administer the Combined Fund subject to constraints set forth in the Coal Act, ERISA and the LMRA. The Coal Act details the level of health and death benefits the Fund is to provide, *id.* § 9703(b)(1), (c), and the circumstances in which the Fund is permitted to increase or decrease health benefit levels, *id.* § 9703(b)(2). The Act specifies how the Fund is to account for premiums received, allocate administrative expenses and interest earned, and respond to shortfalls or surpluses in premium accounts. *Id.* § 9704(e)(1)–(3). Whatever discretion the Trustees have in administering the Fund is curtailed further by the "strict fiduciary obligations" imposed by ERISA, *Massachusetts Mutual Life Insurance Company* v. *Russell*, 473 U.S. 134, 140 n.8 (1985), as well as by the obligations imposed on trustees of Taft-Hartley plans to act exclusively in the interests of plan beneficiaries and, in no circumstances, for the benefit of appointing parties. *NLRB* v. *Amax Coal Co.*, 453 U.S. 322, 329 (1981).

As for Brinks's claim that Congress delegated "enforcement" power to the Combined Fund (Pet. 3, 9), the Coal Act

makes clear that Congress did no more than provide the Trustees with standing to file suits to collect delinquent statutory premiums. The relevant provision of the Coal Act provides:

> "The provisions of section 4301 of . . . [ERISA] shall apply to any claim arising out of an obligation to pay any amount required to be paid by this chapter in the same manner as any claim arising out of an obligation to pay withdrawal liability under subtitle E of title IV of [ERISA]." 26 U.S.C. § 9721.

The courts, not the Combined Fund, adjudicate such claims and issue orders compelling companies to pay premiums. Brinks's suggestion that the Trustees have unfettered discretion in choosing "whether to sue, whom to sue, how much to settle for, and how any settlement should be structured," (Pet. 9) ignores the statutory and regulatory framework in which the Trustees operate. The Trustees are obligated to make "systematic, reasonable and diligent efforts to collect delinquent contributions," and any failure to do so may be deemed a prohibited transaction under §§ 406 and 407(a) of ERISA. *See* 41 Fed. Reg. 12740, 12741 (Mar. 26, 1976); *see also* 29 U.S.C. § 1132(l)(1)(A) (providing for assessment of civil penalties by the Secretary of Labor against fiduciaries for "any breach of fiduciary responsibility under (or other violation of) part 4 of [Title I]" of ERISA).

Unable to rely on the terms of the Coal Act to bolster their executive delegation claim, Brinks turns to three of this Court's separation-of-powers decisions. Pet. 3–4, 13–14, citing *Printz* v. *United States*, 521 U.S. 898 (1997), *Bowsher* v. *Synar*, 478 U.S. 714 (1986), and *Buckley* v. *Valeo*, 424 U.S. 1 (1976). None of those decisions supports a grant of certiorari in this case.

In *Printz*, this Court struck down as unconstitutional provisions of the Brady Handgun Violence Prevention Act that conferred upon state and local law enforcement officers,

rather than the President, the power to implement a federal program of background checks on prospective handgun purchasers. 521 U.S. at 902–35. Although the Court was concerned principally with preserving the Constitution's system of "dual sovereignty" by precluding federal commandeering of state government officials, *see id.* at 918–22, 925–33, the Court expressed concern that Congress had provided for the implementation of a federal statute "without meaningful Presidential control." *Id.* at 922. The Court noted that "the power of the President would be subject to reduction, if Congress could act as effectively without the President as with him, by simply requiring state officers to execute its laws." *Id.* at 923.

In this case, Brinks cannot plausibly claim that Congress attempted to operate "without the President." The Coal Act assigned the critical tasks—calculating the per beneficiary premium, assigning beneficiaries, conducting reviews of assignments—to SSA. 26 U.S.C. §§ 9704(b)(2), 9706(a), (f). And as noted, *supra*, the Coal Act tasks the Secretary of Interior with transferring monies to the Combined Fund, 30 U.S.C. § 1232(h), and the Secretary of the Treasury with deciding whether to waive statutory penalties for failing to pay premiums, 26 U.S.C. § 9707. Congress did not bypass the federal executive or place those powers in the hands of the Trustees.

Bowsher v. *Synar* is equally unavailing. Pet. 14. In *Bowsher*, this Court struck down as unconstitutional provisions of the Balanced Budget and Emergency Deficit Control Act of 1985 ("Budget Act") that conferred executive power on the Comptroller General, an official removable only by Congress. 478 U.S. at 717–736. As this Court explained, "the executive nature of the Comptroller General's functions under the [Budget] Act is revealed in § 252(a)(3) which gives the Comptroller General *the ultimate authority to determine the budget cuts to be made*." *Id.* at 733 (emphasis added). The Budget

Act provided that the President was required to "carry out, without the slightest variation . . ., the directive of the Comptroller General as to the budget reductions." *Id.* Here, Brinks does not even try to suggest that any of the powers delegated to the Trustees in the Coal Act resemble the type of core governmental function assigned to the Comptroller General or that the executive is somehow bound to follow decisions made by the Trustees.

Brinks's last hope is *Buckley* v. *Valeo*, 424 U.S. 1 (1976). Pet. 4, 13. *Buckley* concerned the constitutionality of the Federal Election Campaign Act of 1971 ("FECA"), a statute that bears no resemblance to the Coal Act. Congress adopted FECA to serve the basic governmental interest in safeguarding the integrity of the electoral process. See 424 U.S. at 10, 58. Congress conferred extensive rulemaking, adjudicative and enforcement powers on the Federal Election Commission, whose members were selected predominantly by Congress. *See id.* at 109–41. Brinks seeks support from the part of *Buckley* that struck down as a violation of the Appointments Clause those provisions of FECA that vested in the Commission "'primary responsibility for conducting civil litigation in the courts of the United States for vindicating *public rights*.'" Pet. 13, quoting *Buckley*, 424 U.S. at 140 (emphasis added).

Brinks cannot plausibly claim that the Trustees are "vindicating *public rights*" of the kind at issue in *Buckley* when they sue to collect delinquent premiums. The Combined Fund is a private ERISA plan, 26 U.S.C. § 9702(a)(1), that sues to collect monies owed to it, not the federal government.[6] Those monies, when received, are used to pay health

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[6] As we explain in Part I(C), *infra*, the actions taken by the Trustees to "enforce" operators' premium obligations are no different than the actions brought by trustees of multiemployer ERISA plans to enforce statutorily-imposed withdrawal liability. In fact, the Trustees bring lawsuits under

benefits to a defined population of retired coal miners and their dependents. *See id.* § 9703. The fact that Congress imposed a premium obligation on certain coal operators to safeguard the health benefits those operators had promised their retirees does not convert the collection actions brought by the Trustees into actions to vindicate "public rights." Nor does *Buckley* stand for the proposition that the Constitution precludes private parties from bringing lawsuits to enforce federal laws.[7]

C. Labeling Coal Act Premiums as "Taxes" Does Not Change the Constitutional Inquiry.

Brinks's nondelegation challenge is not bolstered by the fact that several courts have labeled Coal Act premiums as "taxes."[8] Pet. 12. The face of the statute makes clear that

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the same civil enforcement provisions used by multiemployer plans to collect withdrawal liability. See 26 U.S.C. § 9721 (incorporating into the Coal Act's civil enforcement mechanism the provisions of § 4301 of ERISA, 29 U.S.C. § 1451).

[7] Federal statutes routinely vest in private parties the power to sue to enforce legislative goals without violating the nondelegation doctrine. *See, e.g.*, 18 U.S.C. § 1964(c) (authorizing private suits for treble damages for violations of RICO); 49 U.S.C. §§ 11704, 14704, 15904 (authorizing private suits against regulated carriers under the Interstate Commerce Commission Termination Act); 15 U.S.C. §§ 15, 26 (authorizing private suits for violations of the antitrust laws, including suits seeking monetary damages, injunctive relief and treble damages); 42 U.S.C. § 2000e-5 (authorizing private suits under Title VII of the Civil Rights Act of 1964 for backpay, frontpay, and injunctive relief and, after the passage of 42 U.S.C. § 1981a in 1991, for compensatory and punitive damages); 42 U.S.C. § 9659 (authorizing private suits under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 for violations of environmental standards).

[8] The Trustees continue to maintain, as they have throughout this litigation, that Coal Act premiums are to be treated as taxes for bankruptcy purposes, but are not subject to the Internal Revenue Code's tax refund provision. In light of the court of appeals' ruling in this case to the

Congress exercised all aspects of the taxing power. See 26 U.S.C. §§ 9701–9704, 9706, 9707. Thus, Congress determined the formula for calculating the per beneficiary premium and the process for assigning beneficiaries to coal companies, thereby establishing whether, on what basis, in what amount, and on whom to impose premium liability, and specified how those premiums must be spent.

The court of appeals properly ruled that the designation of Coal Act premiums as "taxes" does not convert the Trustees' responsibilities into unconstitutional delegations of governmental authority. See Pet. App. 20a (noting that "[t]he label placed on the monies received by the Fund does not change the Fund's function"). Rather, "[i]n this scheme, the Coal Act, in essence, leaves to the private entity only the administrative tasks of collecting the premiums, preserving them for the benefit of the beneficiaries, and using them to provide the beneficiaries with the benefits specified in the Coal Act." Pet. App. 21a. Nor does the "tax" label change the fact that when the Trustees sue delinquent coal operators, they are doing so to collect statutorily-imposed obligations that are payable to an ERISA plan.

These are exactly the same powers given to ERISA plans that are subject to the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"), 29 U.S.C. §§ 1381–1461. As the court of appeals recognized (Pet. App. 20a), MPPAA obligates certain employers to pay withdrawal liability to multiemployer ERISA plans and grants the trustees of those plans the standing to bring suits to compel employers to pay the federally-mandated withdrawal liability. In fact, the power to sue is granted under the same statutory provision—§ 4301(a) of ERISA—that grants the Trustees of the Com-

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contrary, 199 F.3d 694, 702 (4th Cir. 1999), the Trustees assume, for purposes of opposing this petition only, that Coal Act premiums are subject to refund under 26 U.S.C. § 7422.

bined Fund the power to sue to collect unpaid premiums. See 26 U.S.C. § 9721 (stating that "[t]he provisions of § 4301 of [ERISA] shall apply to any claim arising out of an obligation to pay any amount required to be paid" by the Coal Act). The trustees of multiemployer pension plans, like the Trustees of the Combined Fund, "decide[] whether to sue, whom to sue, how much to settle for, and how any settlement should be structured." Pet. 9. In both contexts, private parties may make decisions about their pursuit of dollars that are owed to them—not the government—under a federal statute enforced in federal court. And, this Court has examined the constitutionality of MPPAA three times without suggesting that the statute is vulnerable under the nondelegation doctrine.[9]

—It is no answer for Brinks to try to distinguish Coal Act premiums from MPPAA withdrawal liability on the ground that one has been labeled a "tax" and the other has not. Pet. 16. Both are assessed by statute. Pet. App. 20a. Neither statute violates the nondelegation doctrine.

II. THE COAL ACT'S PROVISIONS ARE SEVERABLE.

"The standard for determining the severability of an unconstitutional provision is well established," *Alaska Airlines, Inc.* v. *Brock*, 480 U.S. 678, 684 (1987), and the unanimous decision of the court of appeals rejecting Brinks's claim that the Coal Act is not severable is based on a straightforward application of that standard. The court of appeals heeded this Court's directive that "courts 'should refrain from invalidating more of the statute than is necessary. . . . [W]henever an act of Congress contains unobjectionable

[9] See Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal., 508 U.S. 602 (1993) (upholding MPPAA against Fifth Amendment challenges); Connolly v. Pension Benefit Guar. Corp., 475 U.S. 211 (1986) (same); Pension Benefit Guar. Corp. v. R.A. Gray & Co., 467 U.S. 717 (1984) (same).

provisions separable from those found to be unconstitutional, it is the duty of this court to so declare, and to maintain the act in so far as it is valid.'" Pet. App. 24a, quoting *Alaska Airlines*, 480 U.S. at 684. Determining whether a statute's provisions are severable requires "'an inquiry into legislative intent.'" Pet. App. 24a, quoting *Minnesota* v. *Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 191 (1991).

Here, the inquiry into legislative intent begins with the severability provision applicable to the Coal Act, 26 U.S.C. § 7852(a). The court of appeals properly focused its attention on that provision, recognizing that

> "an explicit severability clause within a statute 'creates a presumption that Congress did not intend the validity of the statute in question to depend on the validity of the constitutionally offensive provision. In such a case, unless there is strong evidence that Congress intended otherwise, the objectionable provision can be excised from the remainder of the statute.'" Pet. App. 24a–25a, quoting *Alaska Airlines*, 480 U.S. at 686 (citations omitted).

Brinks's claim that the Coal Act's provisions cannot be severed rests largely on a flawed reading of the severability provision applicable to the Coal Act. That provision states in full:

> "If any provision of this title [*i.e.*, Title 26 of the U.S. Code] or the application thereof to any person or circumstances, is held invalid, the remainder of the title, and the application of such provision to other persons or circumstances, shall not be affected thereby." 26 U.S.C. § 7852(a).

Brinks contends, without any case law support, that these words preclude any change in its Coal Act *liability* following the Coal Act's invalidation as to Eastern Enterprises. Pet. 19.

The court of appeals properly rejected Brinks's misinterpretation of § 7852(a):

> "From a straightforward reading of this provision, we conclude that the clause merely provides that if a provision in Title 26 applied to one party before the provision was invalidated as to other parties, it will continue to apply to that one party. It does not mean that the application of the provision to one party cannot result in changed *liabilities* after an invalidation as to other parties. Severing a statute's provisions will occasionally result in enhanced liabilities for some parties as a result of the remaining provisions. That result is not inconsistent with the idea that the *application* of the statute will not be affected as to those parties." Pet. App. 34a.

Thus, as the court of appeals recognized, § 7852(a) stands for the limited proposition that "the Coal Act remains operative as to non-Eastern-like coal companies." Pet. App. 34a.

In the face of § 7852(a), Brinks presents no evidence—much less the strong evidence required by *Alaska Airlines*—to overcome the presumption of severability. Brinks asserts, without any citation, that "[t]here was no Coal Act without the super reachbacks" and that "[f]rom the findings and policies of the statute and the legislative record, it is unlikely that what remains of the Coal Act would have been passed independently of what was actually enacted." Pet. 20. Brinks does not cite a single piece of legislative history suggesting that Congress would not have passed the Coal Act without the "invalid application" to companies such as Eastern Enterprises. Pet. 18.[10] Brinks's unsupported assertions do not warrant review.

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[10] The legislative history on which Brinks relies does not refer to "super reachback liability" or "super reachback companies." See 138 Cong. Rec. S17603 (daily ed. Oct. 8, 1992). Rather, that legislative history refers to the importance of "reachback companies," *id.*, which

As the court of appeals noted, Congress' actions during the last six years "suggest that Congress would have intended that the constitutional applications of the Coal Act continue to survive *Eastern Enterprises*." Pet. App. 26a. On three separate occasions since this Court decided *Eastern Enterprises*, Congress has provided additional appropriations to the Combined Fund.[11] "Although these appropriations were by a later Congress, they carry weight in construing the intent of Congress in enacting the Coal Act." Pet. App. 26a, citing *Loving* v. *United States*, 517 U.S. 748, 770 (1996).

Lastly, Brinks cannot credibly contend that the Coal Act is "functionally incapable of severance." Pet. 18.[12] This argument is refuted by the fact that the Combined Fund has continued to provide health care benefits for tens of thousands of retired coal miners and their dependents during the six years since this Court decided *Eastern Enterprises*,

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encompasses all companies—including petitioners—that "once were signatory to coal wage agreements with contribution obligations," but later "bargained out of their funding obligations." *Id.*; *see also Eastern Enterprises*, 524 U.S. at 510–11 (discussing the exodus of such companies from the national coal wage agreements).

[11] *See* Consolidated Appropriations Act, 2000, § 408, Pub. L. 106-113, 113 Stat. 1501, 1501A-214 (1999) (providing for the transfer of $68 million to the Combined Fund "to pay the amount of any shortfall in any premium account for any plan year under the Combined Fund"); Department of Interior and Related Agencies Appropriations Act, 2001, § 701(a)(1), Pub. L. 106-291, 114 Stat. 922, 1024 (2000) (providing for the transfer of "such amounts as estimated by the trustees . . . [ultimately determined to be $53 million] to offset the amount of any deficit in net assets in the Combined Fund through August 31, 2001"); Consolidated Appropriations Resolution, 2003, § 153, Pub. L. 108-7, 117 Stat. 11, 246 (2003) (providing for the transfer of $34 million "to offset the amount of any deficit in the net assets of the Combined Fund").

[12] The one case Brinks cites in support of its argument that the Coal Act is incapable of severance is *Reno* v. *ACLU*, 521 U.S. 844, 882 (1997), in which this Court found the relevant statute severable.

and by the Act's funding mechanisms which contemplate that there will be "unassigned beneficiaries"—persons who cannot be assigned to a particular coal operator under the terms of § 9706(a).[13]

Brinks ignores the provisions for unassigned beneficiaries, 26 U.S.C. §§ 9704(a)(3), 9704(d), arguing instead that *Eastern* beneficiaries cannot be "unassigned" because there are operators—Eastern-type operators—to which those beneficiaries "should be assigned under § 9706(a)." Pet. 19. In so arguing, Brinks miscontrues the nature and effect of *Eastern Enterprises*, just as it does in seeking review of its *Eastern* reassignment challenge, *see* Part III, *infra*. The consequence of *Eastern Enterprises*, as the court of appeals recognized, is that it was never proper to assign beneficiaries to Eastern-type operators. *See* Pet. App. 30a ("When *Eastern Enterprises* held that it was unconstitutional to assign retirees to Eastern under the Coal Act, the ruling effectively held that the Commissioner *should never have assigned* retirees to Eastern *in the first place*."). Because those assignments should never have been made, *Eastern* beneficiaries are properly designated as "unassigned" unless a proper assignment can be made to a company as to which the Coal Act is constitutional. Either way, as the unanimous panel of the court of appeals held, the Act "remains fully functional without including Eastern-like coal operators." Pet. App. 27a.

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[13] The Act directs that operators' annual premium will consist, in part, of an unassigned beneficiaries premium computed under § 9704(d). *See* 26 U.S.C. § 9704(a)(3). That premium, along with other funds designated by Congress, 26 U.S.C. § 9705(a)(3), (b)(2), are used to fund health care benefits for unassigned beneficiaries.

III. THE COMMISSIONER OF SOCIAL SECURITY ACTED WITHIN HER STATUTORY AUTHORITY IN ASSIGNING TO PETITIONERS BENEFICIARIES WHOSE INITIAL ASSIGNMENTS WERE UNCONSTITUTIONAL UNDER *EASTERN ENTERPRISES*.

There is no conflict in the circuits and no reason for this Court to review the court of appeals' ruling that SSA has the authority under the Coal Act to assign to Brinks beneficiaries who had been assigned originally (but erroneously) to Eastern-type operators.[14] Brinks contends that the court of appeals "rewrote" the Coal Act in permitting SSA to make assignments "contrary to the prescribed statutory order." Pet. 21. Neither the court of appeals nor SSA rewrote any provision of the Coal Act. Rather, as the Panel majority recognized, "[i]n applying § 9706 to the retirees left unassigned as the result of the decision in *Eastern Enterprises*, the Commissioner . . . merely removed from the pool of possible contributors those coal operators that could not constitutionally be required to contribute." Pet. App. 32a. In reassigning *Eastern* beneficiaries to companies like Brinks that had employed the beneficiaries and as to whom the Coal Act is constitutional, "the Commissioner did not change the wording of the statute, but merely followed the Supreme Court's ruling that the Coal Act may only apply to a narrower

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[14] As noted at p. 7, *supra*, the issue of SSA's authority to assign *Eastern* beneficiaries to companies as to which the Coal Act is constitutional is currently the subject of appeals in the U.S. Court of Appeals for the Sixth Circuit. *Sidney Coal Co. Inc.* v. *Social Security Admin.*, Nos. 04-6286 & 04-6291 (6th Cir. docketed Nov. 12, 2004). With the exception of the district court decision on appeal to the Sixth Circuit, all other courts that have considered the *Eastern* reassignment issue have upheld SSA's authority to make such assignments. See p. 7 n.3, *supra*.

group of persons than previously thought." *Id.* Brinks's arguments to the contrary fail for at least three different reasons.

First, this is not a case, as Brinks contends, that can be resolved on the "plain language" of the Coal Act. See Pet. 21–22.[15] In enacting the Coal Act, Congress never anticipated the Supreme Court's decision in *Eastern Enterprises*. Specifically, Congress never considered how to fund health care costs for beneficiaries originally assigned to Eastern-type operators in the event that assignments to those operators were held unconstitutional. The task facing SSA in the wake of *Eastern Enterprises* was to determine what manner of funding the health care costs of the *Eastern* beneficiaries best effectuated Congress's purposes, when the source of funding Congress designated for those beneficiaries—assignment to Eastern-type operators—had been ruled unconstitutional.

In this regard, the issue raised in this petition is similar to the issue resolved in *Barnhart* v. *Peabody Coal Co.*, 537 U.S. 149 (2003). There, to resolve a conflict in the circuits, this Court addressed the consequence of SSA's failure to assign beneficiaries by the date specified in § 9706(a) of the Coal Act. *Peabody*, 537 U.S. at 163–68. This Court concluded that Congress did not intend that beneficiaries not assigned by that date be placed automatically in the unassigned pool. *Id.* Congress had not anticipated that SSA would be unable to complete the process of assigning beneficiaries by the statutory date, just as Congress had not contemplated that it is

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[15] Nor do the plain words of the Internal Revenue Code's severability provision, 26 U.S.C. § 7852(a), resolve this issue, as Brinks contends. Pet. 22. As noted at p. 20, *supra*, the Panel majority properly rejected petitioners' argument that the severability clause somehow precludes a change in the amount of petitioners' *liability* after § 9706(a)(3) of the Coal Act was struck down as applied to Eastern Enterprises. Even the dissent does not endorse petitioners' novel and unsupported reading of § 7852(a). *See* Pet. App. 37a-41a.

unconstitutional to assign beneficiaries to Eastern-type operators. The Panel majority recognized that the instant case, like *Peabody*, presents a "'case unprovided for'" that cannot be resolved by a "plain words" approach. Pet. App. 31a–32a, quoting *Peabody*, 537 U.S. at 169.

Brinks glosses over *Peabody* (Pet. 21), and the dissent ignores *Peabody* entirely (Pet. App. 37a–41a (Wilkins, C.J. dissenting)). Both rely, instead, on this Court's "plain words" approach in *Barnhart* v. *Sigmon Coal Co.*, 534 U.S. 438 (2002). *See* Pet. 21–22; Pet. App. 40a. *Sigmon*, however, bears no resemblance to the instant action. Here, unlike in *Sigmon*, the language of the relevant Coal Act provision, § 9706(a)(3), produces an unconstitutional result—*i.e.*, the assignment of beneficiaries to Eastern Enterprises. The fact that the *Sigmon* Court refused to consider evidence of congressional purpose that, in its view, contradicted the plain language of § 9701(c)(2)—a provision as to which there was no constitutional infirmity—does not mean that it was inappropriate in the instant action for the Panel majority to look beyond the plain words of § 9706(a)(3) to determine congressional intent.

Second, Brinks refuses to consider the Coal Act's legislative history, even though this is a case in which the plain words of the statute—in § 9706(a)(3)—produce an unconstitutional result that Congress could not have anticipated. The Panel majority properly turned to the same legislative history on which this Court relied in *Peabody* in rejecting other coal operators' attempt to avoid premium liability for retired miners whom the operators had employed. *See* Pet. App. 32a–33a. As the *Peabody* Court concluded, it was Congress's "expressed understanding that the companies that got the benefit of a worker's labor should pay for the worker's benefits." 537 U.S. at 159 n.6. Congress never conceived that "the category of the 'unassigned' would

include beneficiaries, let alone a lot of beneficiaries, who could be connected with an operator." *Id.* at 165–66.

Here, there is no dispute that Brinks employed the beneficiaries at issue, nor is there any dispute that Brinks employed those persons longer than any other company as to whom it is constitutional to make assignments under the Coal Act.[16] SSA decided, in the wake of *Eastern Enterprises*, to assign beneficiaries who had been assigned previously to Eastern-type operators to companies, like Brinks, that had employed them, rather than designate those beneficiaries as permanently "unassigned."

Third, Brinks's claim that the disputed assignments "are supposed to be made" to Eastern-type operators (Pet. 21) miscontrues the nature and effect of the *Eastern Enterprises* decision. As the panel majority recognized:

> "When *Eastern Enterprises* held that it was unconstitutional to assign retirees to Eastern under the Coal Act, the ruling effectively held that the Commissioner *should never have assigned* retirees to Eastern [under the Coal Act] *in the first place*. Because the Commissioner's assignments were invalid from the beginning, she had to start over to assign the beneficiaries to comport with the terms of the statute as well as the Constitution." Pet. App. 30a.

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[16] Brinks's claim that the additional assignments have made "a harsh law even harsher" (Pet. 22) does nothing to advance its request that this Court grant the petition. Brinks's statements about how long certain beneficiaries worked for it or how much those beneficiaries earned in wages are not even supported by citations to the record. *Id.* In any event, Brinks does not dispute that as among all operators to whom the Coal Act is constitutional it employed the beneficiaries at issue "for a longer period of time than any other signatory operator prior to the effective date of the 1978 coal wage agreement." 26 U.S.C. § 9706(a)(3).

The Panel majority's analysis is in keeping with this Court's jurisprudence, which recognizes "'a general rule of retrospective effect for the constitutional decisions of this Court.'" *Harper* v. *Virginia Dep't of Taxation*, 509 U.S. 86, 94 (1993), quoting *Robinson* v. *Neil*, 409 U.S. 505, 507 (1973); *Rivers* v. *Roadway Express, Inc.*, 511 U.S. 298, 312–13 (1994) (holding that "[a] judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction"). *Harper* and *Rivers* teach that, when this Court decided *Eastern Enterprises*, it did not announce merely that it would be unconstitutional from that point forward to assign beneficiaries to Eastern Enterprises, but that it had *never* been constitutional to do so. Thus, when SSA assigned *Eastern* beneficiaries to petitioners, SSA was making the *first* constitutional assignment under the Coal Act.[17]

Like Brinks, the dissent does not take into account the retroactive nature of *Eastern Enterprises*. The dissent's statement that "the plain language of § 9706(a) at the time the original assignments were made identified a single company—an *Eastern*-type company," (Pet. App. 37a–38a) although literally true, is—as the Panel majority recognized—"incomplete in that it fails to address how the assignment pool was to be determined when Eastern-like companies were disqualified *as of the time the original assignments were made*." Pet. App. 31a n.3. In making the 95 assignments to Brinks, SSA "did not change the wording of the statute, but

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[17] Even if SSA's assignments of *Eastern* beneficiaries to petitioners were considered an extension of § 9706(a)(3) of the Coal Act, the Court recognizes that severability analysis may require extension of a statutory provision when consistent with congressional intent. *See Booker* v. *United States*, 543 U.S. __, 125 S. Ct. 738, 757–58 (2005) (Breyer, J., quoting *Welsh* v. *United States*, 398 U.S. 333, 361 (1970) (Harlan, J., concurring in result), *and Heckler* v. *Mathews*, 465 U.S. 728, 739, n.5 (1984)); *id.* at 778 n.8 (Stevens, J., dissenting).

merely followed the Supreme Court's ruling that the Coal Act may only apply to a narrower group of persons than previously thought." Pet. App. 32a. No further review of SSA's action is warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

HOWARD R. RUBIN
WILLIAM E. COPLEY
SONNENSCHEIN NATH & ROSENTHAL LLP
1301 K Street, N.W.
Suite 600, East Tower
Washington, D.C. 20005
(202) 408-6400

STEPHEN J. POLLAK *
JOHN TOWNSEND RICH
GOODWIN PROCTER LLP
901 New York Ave., N.W.
Washington, D.C. 20001
(202) 346-4000

DAVID W. ALLEN
CHRISTOPHER F. CLARKE
Office of the General Counsel
UMWA HEALTH AND RETIREMENT FUNDS
2121 K Street, N.W.
Washington, D.C. 0037
(202) 521-2220

Attorneys for the Respondents Trustees of the UMWA Combined Benefit Fund and UMWA Combined Benefit Fund

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* Counsel of Record